

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
CENTRAL PUGET SOUND REGION
STATE OF WASHINGTON

FRIENDS OF PIERCE COUNTY, et al., CITY
OF BONNEY LAKE, and MARILYN
SANDERS, et al.,

Petitioners,

v.

PIERCE COUNTY,

Respondent

and

ORTON FARMS, et al., CITY OF SUMNER,
BETHELL SCHOOL DISTRICT, PUYALLUP
SCHOOL DISTRICT, and FORTERRA NW,

Intervenors,

and

WASHINGTON SUSTAINABLE FOOD AND
FARMING NETWORK, et al.,

Amicus

CASE NO. 12-3-0002c

(Friends of Pierce County)

ORDER GRANTING STAY

This matter comes before the Board on expedited motions for stay filed by Respondent Pierce County (August 8, 2012), Intervenor Orton Farms (August 8, 2012), and Intervenor City of Sumner (August 10, 2012).

BACKGROUND

By Final Decision and Order (FDO) issued July 9, 2012, the Board decided challenges to amendments to Pierce County's comprehensive plan, ruling, *inter alia*, that Amendments U-

1 3a and C-5 failed to comply with requirements of the GMA.¹ Pierce County had previously
2 enacted Ordinance 2012-11 which deferred the effective date of the amendments subject to
3 challenge in this case to August 15, 2012. In light of the FDO ruling on the various
4 challenged amendments, Pierce County Council on July 31, 2012, adopted Ordinance
5 2012-34s, moving the effective date of Amendments U-3a, C-5 and M-3 to April 1, 2013.²
6

7 On August 8, 2012, Orton Farms and Sumner filed separate appeals of the Amendment U-
8 3a and C-5 portion of the FDO to superior court in Thurston County. Pursuant to WAC 242-
9 03-860, motions for stay of effectiveness of the Board's final order were promptly filed with
10 the Board, the moving parties asking for expedited consideration. In response to the
11 Board's scheduling order,³ other parties indicated their support for the motion.⁴ Friends of
12 Pierce County, Pierce County, Orton Farms, and City of Sumner provided a joint stipulation
13 of conditions for the stay.
14

15 **APPLICABLE LAW**

16
17 In issuing a final order finding noncompliance with the requirements of the GMA, the board
18 must remand the matter to the affected county or city and "specify a time ... within which the
19 county shall comply...." RCW 36.70A.300. When the allotted compliance time has expired,
20 the board must hold a hearing and render a determination. The compliance hearing "shall
21 be given the highest priority of business to be conducted by the board." RCW 36.70A.
22 330(2).
23

24
25 As the Court of Appeals has acknowledged,⁵ pendency of an appeal of a Growth Board
26 decision does not prohibit a County from taking legislative action to comply with the Board's
27

28 ¹ Friends of Pierce County, et al., Orton Farms, et al, City of Sumner, and Forterra are parties to the portion of
29 the case concerning Amendments U-3a and C-5.

30 ² This would be sufficiently after the compliance hearing set for January 24, 2013, to allow time for issuance of
31 a Compliance Order and further County action, if needed.

32 ³ Scheduling Order on Motion for Stay, August 10, 2012.

⁴ Intervenor Bethel School District Memorandum in Support of Motions for Stay, August 15, 2012; Intervenor
Forterra's Statement in Support of Joint Stipulation for Stay, August 15, 2012.

⁵ *Clark County, et al., v. Western Washington Growth Management Hearings Board*, 161 Wn.App. 204, 227
(2011) *rev. granted*, 172 Wn.2d 1006 (2011).

1 order. Further, the GMA “arguably *requires* the Growth Board to review a County’s progress
2 toward compliance” and to continue enforcement of its orders notwithstanding pendency of
3 an appeal.⁶ The Board’s rules at WAC 242-03-860 allow a narrow exception where GMA
4 goals are not likely to be thwarted by actions taken pending outcome of an appeal.
5

6 WAC 242-03-860 - Stay provides:
7

8 The presiding officer pursuant to RCW 34.05.467 or the board pursuant to
9 RCW 34.05.550(1) may stay the effectiveness of a final order upon motion
10 for stay filed within ten days of filing an appeal to a reviewing court.

11 A stay may be granted if the presiding officer or board finds:

12 (1) An appeal is pending in court, the outcome of which may render the case
13 moot; and

14 (2) Delay in application of the board's order will not substantially harm the
15 interest of other parties to the proceedings; and

16 (3)(a) Delay in application of the board's order is not likely to result in actions
17 that substantially interfere with the goals of the GMA, including the goals and
18 policies of the Shoreline Management Act; or

19 (b) The parties have agreed to halt implementation of the noncompliant
20 ordinance and undertake no irreversible actions regarding the subject matter
21 of the case during the pendency of the stay; and

22 (4) Delay in application of the board's order furthers the orderly
23 administration of justice.
24

25 The board's order granting a stay will contain appropriate findings and
26 conditions. A board order denying stay is not subject to judicial review.
27

28 FINDINGS AND CONDITIONS

29 Based on the FDO, the motions for expedited stay and the stipulations of the parties, the
30 Board finds:
31

32 _____
⁶ 161 Wn.App. at 227, n.17 (emphasis in original).

1. On August 8, 2012, notices of appeal of the FDO were filed in Thurston County Superior Court by Orton Farms, Cause No. 12-2-01649-3, and the City of Sumner, Cause No. 12-2-01650-7, appealing the Board's rulings concerning Amendments U-3a and C-5.
2. Motions for stay of effectiveness of the Board's rulings concerning Amendments U-3a and C-5 were filed by Pierce County (August 8, 2012), Orton Farms (August 10, 2012) and City of Sumner (August 10, 2012). Pursuant to WAC 242-03-860, the motions were timely.
3. The outcome of the appeals now pending in court might render moot portions of the FDO or subsequent compliance proceedings.
4. Forterra and Friends of Pierce County, et al., are additional parties to the Amendment U-3a and C-5 matter. Both Forterra and Friends have stipulated that granting stay on the conditions set forth below will not substantially harm their interests.
5. The County has extended the effective date of the non-compliant amendments to April 1, 2013. The County agrees to extend effectiveness further until the matter is resolved in court or by actions in compliance. Thus grant of a stay will not likely result in actions that interfere with the goals of the GMA, as set forth in the FDO.
6. The parties have agreed to halt implementation of the non-compliant amendments and undertake no irreversible actions regarding the subject matter of the case during the pendency of the stay.
7. Subject to the following conditions,⁷ the Board finds delay in application of the parts of the Board's decision affecting Pierce Comprehensive Plan Amendments U-3a and C-5 furthers the orderly administration of justice.
 - 7.1 Comprehensive Plan Amendments U-3a and C-5 shall not become effective or go into effect unless the Board concludes that Pierce County has achieved compliance with the GMA in a compliance hearing or a court on appeal reverses the Board's finding of noncompliance related to these amendments and remands the matter to the Board for entry of an order consistent with that court decision. Pierce County shall extend the effective dates of Comprehensive Plan Amendments U-3a and C-5 as needed to comply with this condition. The stay shall remain in effect until either of the events described in this section occur, or the County, Orton Farms, Sumner, Forterra and Friends of Pierce County all agree otherwise and collectively request the Board to terminate the stay.

⁷ Pierce County, Orton Farms, Sumner, Forterra and Friends of Pierce County stipulated to Conditions 7.1, 7.2, and 7.3.

1 7.2 None of the land subject to Amendments U-3a and C-5 shall be annexed to any
2 city until after this stay expires or is rescinded, as described in section 7.1.

3 7.3 No applications or developments shall vest to Amendments U-3a or C-5 or any
4 development regulations that implement these amendments until this stay expires or
5 is rescinded as described in section 7.1. This condition shall not prohibit vesting to
6 the agricultural and rural comprehensive plan provisions and development
7 regulations in effect on the date this stay is issued.

8 8. The County shall promptly provide to the Board copies of ordinances enacted for further
9 extension of the effective date of Amendments U-3a and C-5 as provided above. The
10 Board shall terminate the stay if the Amendments become effective prior to judicial
11 resolution.

12 ORDER

13 Based upon WAC 242-03-860, the Final Decision and Order in Case No. 12-3-0002c, and
14 the motions and stipulations of the parties, the Board ORDERS:

- 15 • Expedited motions for stay filed by Pierce County, Orton Farms, and City of Sumner,
16 are **granted**.
- 17 • The provision of the Final Decision and Order requiring the County to come into
18 compliance concerning Comprehensive Plan Amendments U-3a and C-5 by a date
19 certain is **stayed**, subject to the stipulations of the parties and the conditions set forth
20 above.
21

22 Dated this 21st day of August, 2012.
23

24 _____
25 Margaret Pageler, Presiding Officer
26

27 _____
28 William Roehl, Board Member
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30 _____
31 Raymond Paoella, Board Member
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